IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 661 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

SAIYED YUSUF SAYADALI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 661 of 2001

MR JM BUDDHBHATTI for the appellant

MR BD DESAI APP for the Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 23/07/2002

ORAL JUDGEMENT

In this appeal preferred from jail the learned counsel Mr Buddhbhatti, appointed by the State Government, prays only for varying the order of punishment. In fact, the appeal admitted in May 2002 was

listed for urgent final hearing at the instance of the appellant who had filed an application for temporary bail or immediate hearing on the ground of his personal circumstances of urgent necessity of treating his crippled son.

2 The learned counsel Mr Buddhbhatti after perusing the record and proceedings and the impugned judgement fairly conceded that the order of conviction was not assailable. He, however, in the facts and circumstances submitted that the order of sentence was required to be interfered in the interest of justice in so far as out of the sentence of R.I. for four years the appellant has already undergone a period of almost three years and 10 months without any adverse incident. It was stated at the Bar and conceded by the learned APP after an enquiry that the appellant belongs to an extremely poor family with the liabilities of dependants of the appellant and he is not in a position to pay the fine of Rs.10,000/-. What would effectively translate into further RI for one more year under the impugned judgement and order. The enquiry of the learned APP also revealed that son of the appellant was indeed handicapped and required treatment, besides the other family members being in need of stewardship of the appellant. In fact, the learned counsel expressed at one stage the apprehension that the appellant will be required to commit another crime for payment of fine in view of his difficult financial conditions.

3 In view of the clear findings supporting the order of conviction, a strict view is rightly taken in the impugned judgement in the case under Narcotic Drugs and Psychotropic Substances Act. However, in the facts and circumstances of this case, as an exception, the order of sentence of punishment is required to be modified to subserve the ends of justice. Therefore, by consent, the order of sentence is modified and the RI for four years is reduced to 3 years and six months. The order of punishment by way of fine of Rs.10,000/- is modified to Rs.5,000/-, in default of payment the appellant shall be required to undergo RI for six months. Subject to the above modifications, the appeal is partly allowed.

(D.H.Waghela, J.)
(mohd)